

Controversy on Regulation of Foreigners Property Ownership in Indonesia

Listyowati Sumanto

Faculty of Law, Universitas Trisakti Jakarta, Indonesia

**Corresponding author. Email: listyowati@trisakti.ac.id*

ABSTRACT

This article aims to analyse the principles of land ownership by foreigners in the era of globalization in Indonesia. Copyright Law No. 11 of 2020, or omnibus law that grants foreign rights to sectors that own land and housing. The purpose of this law is to encourage foreign investment and boost the country's economic growth. Data is qualitatively analysed, and inference statements are used in deductive logic. Legal documents relating to the arrangement of foreign property are specifically intended to be used as a guide for an investigation. This study shows that although this policy has good faith, there is still much controversy regarding concessions on ownership of apartments and housing units to foreigners. Solutions provide processes to prevent them.

Keywords: *Foreign, Property, Regulation of property.*

1. INTRODUCTION

Law Number 5 of 1960 concerning Basic Agrarian Law explains that customary law is the legal source of land law in Indonesia [1] which is adjusted with the people's interests in its relations with the international world. [2]. The Indonesian government has intensified efforts to recognize customary land rights by formalizing them. [3] National Land Law in its implementation to date, besides being proven to be able to provide support for development activities in all fields that require land control and use, also shows weaknesses in the formulation of its contents and arrangements. During the New Order era, these weaknesses carried out development based on policies that prioritize industry growth [4] allowed implementation based on interpretations that deviated from the principles and objectives of the National Land Law, with all the consequences that are currently being felt. Thus, the National Land Law needs to be perfected. Improvement is also required to face the era of globalization that has begun to be handled at this time. [5]

International investment is a strategic step for the country due to lack of capital and technology transfer. [6]. Indonesia, as a developing country, is an attractive place for developed countries to invest in expanding their global business activities. According to Thomas L Friedman, globalization is not a trend but an international system that uses a psywar system. [7]. In the global era, the openness and competition of the ASEAN Economic

Community will cause professionals from all the Association of Southeast Asian Nations (ASEAN) to come freely. [8]

Currently, Indonesia is trying to catch up with other countries in terms of economic growth. One that significantly affects economic growth is the level of investment that is still relatively low in Indonesia. The government responds quickly and accurately in formulating policies in social welfare services and development.

On the initiative of the government and the Department of Agriculture Land Use / Land Authority, the Basic Law of Agriculture was revised. Law No. 11 of 2020 (commonly known as the Comprehensive Law) on job creation was revised. November 2 in the rice sector. 2020. Increase all sectors that drive economic growth from 5.7% (5 points 7%) to 6.0% (6 points 0%) through job creation, investment, and economic growth. This stimulates achievable structural economic changes. Increase productivity.

The land sector is one of the essential factors in the growth and development of the country's economy. However, the current problem is that the Covid-19 pandemic has put pressure on the economy regarding demand and supply. Hence, the government must boost the economy and investment through Law Number 11 of 2020 by removing regulatory barriers. This law aims to create jobs and increase investment to increase domestic economic growth by changing and easing various aspects

of the arrangement. [9] Despite the noble purpose of this policy, there are still many controversial substances, and the public is divided in their agreements regarding the issue of granting apartment property rights to foreigners. [10]. However, there has been an ongoing rejection from the public towards the ratification of Law no. 11 of 2020. The rejection of the substance of this law is due to those who argue that the aim is to establish an investment ecosystem but contains problematic articles on farmers that potentially create moral danger and will harm small communities, especially workers and indigenous peoples. Thomas R Dye explains the elitist policy model of formulation, [11] namely the formulation process that describes the political will of the ruling elite. [12] It is stated that the resulting policy becomes a paradox with the public interest. Perhaps it was Thomas Day who provided the most famous, short and straightforward definition of public policy, “anything a government chooses to do or not to do.” [13]

This document contains Land Law No. 11 of 2020 concerning Property Rights, Farmer’s Rights, Housing Units, Land Registration, and Government Regulation No. 2021, which explicitly regulates apartments’ foreign ownership and property rights. Describe the subject. Consider the subjects of the 18 entities. Indonesia is still controversial.

2. METHODS

This research is a normative legal study that is a process of seeking the rule of law, legal principles and legal doctrines to solve legal problems, develop arguments, theories or new concepts as recipes for solving problems. [14]. Therefore, the study using statute approach, conceptual approach and descriptive. Data analyzed qualitatively, and conclusions statements using deductive logic.

3. RESULT AND DISCUSSION

Based on Article 16 juncto Article 4 paragraph (1) Law Number 5 of 1960 regarding Basic Agrarian Law, land rights consists of 1) Primary Land Rights, namely rights that are directly granted by the government to the landowner, through an application for rights to the state (Land Office), consists of Rights of Ownership/Freehold Title, Rights of Cultivation, Rights of Building, Right of Use. 2) Secondary Rights or Derivative Land Rights, namely rights derived from an agreement between the landowner and the right owner, consists of Rights of Building, Use Right, Lease/Leasehold Title Right, Land Clearing Rights, Collect Forest Products Right, other rights other than those mentioned above which are stipulated by acts and rights of a temporary nature as referred to in Article 53 (Rights of Pawn, Rights of Share Cropping, Rights of Lodging and Rights of Agricultural Land Lease). [15]

The Ministry of Land Affairs and Spatial Planning of the Republic of Indonesia/National Land Agency has

issued regulations for the implementation of the Employment Creation Law, especially land-related regulations, such as Government Regulation No. 18 of 2021, concerning management rights, land rights, units, and Land registration.

I. Rights of Foreigners to Own Apartment Units and Landed Houses

With the advent of foreign investment and business in Indonesia, foreign investors need building or land rights. A foreigner is not an Indonesian citizen, but a person whose existence benefits, does business, does work, or invests in Indonesia. By law, foreigners can have certain land and building rights, such as land use rights for a certain period, lease rights for buildings (leasehold title), ownership rights over Apartment units, and residential dwellings (landed houses). Ownership of these rights includes Law No. 5 of 1960 on the Basic Regulations on Agricultural Principles (Basic Agricultural Law), Law No. 11 of 2020 on Job Creation, and management rights, land rights, and apartment-based rights. It is regulated under Government Regulation No. 18 of 2021. , And land registration.

1. Right of Use over Land for a Certain Term:

Article 42 letter b of Basic Agrarian Law jo. Article 49 paragraph (2) letter e-Government Regulation Number 18 of 2021 stipulates that a foreigner domiciled in Indonesia can have a Right of Use over Land for a certain period. Use rights are the right to use and / or collect land directly controlled by the State or land owned by others, giving them the powers and obligations specified in the decisions granted by the authorized officials. increase. It is not a lease contract or land cultivation contract unless it violates the spirit and provisions of the Land Distribution Law. Land parcels that can be granted a right of use for a certain period are state land, property rights land, and manage land with the following provisions.

- a. The right to use state-owned land: The right to use state-owned land is granted by decree by the Minister of Land Affairs and Space Planning. The maximum period of the right to use is 30 years, can be extended for a maximum of 20 years, and can be renewed for 30 years. The requirements for extending or renewing the right of use are: 1) According to the situation, nature and purpose of the transfer, the land is still cultivated and properly used; 2) The right holder meets the conditions for granting rights; 3) The right holder still meets the requirements of the right holder; Use and/or plan for the public interest.
- b. Right to use on controlled land: This right is granted by a decree granted by the Ministry of Agriculture and Space Planning, with the approval of the owner's right of

control. The maximum term for this right is 30 years, which can be extended up to 20 years and renewed up to 30 years. The conditions for extending or renewing the right to use land under control are the same as for extending/renewing the right to use state-owned land, including the approval of the owner of the control.

- c. The right to use land with the right of ownership: The right to use land by right of ownership arises by agreement between the holder of this right to use and the holder of the ownership right on the basis of an act concluded by an official under the land contract. This document must be registered with the land office to be included in the land register. [16]. This right is valid for a maximum of 30 years. It can be extended on the basis of an act on granting the right to use land with the right of ownership, drawn up by an official under a land contract and registered with the Land Office under an agreement on the right to use with the copyright holder.

The right to use under certain conditions can be used as security for debts associated with mortgage rights, and can be transferred, given to other parties, or changed. Rights of Use can be cancelled due to the following reasons: a) the term is expired as stipulated in the decision on granting, extending, or renewing the rights, for usage rights with specific term; b) The Minister of Land Affairs and Space Planning cancelled this right before his term of office due to the following reasons: (1) Failure to fulfill the obligations and/or prohibitions specified in Article 57 and Article 58 of the Government Regulations No. 18 of 2021; (2) Failure to perform the conditions or obligations stipulated in the use right transfer agreement or the land use agreement with the management right between the use right holder and the owner; (3) Administrative defects; (4) Court judgments obtained permanent legal effect; (5) Change of rights For other land rights; (6) The right holder voluntarily terminates before the expiration of the time limit; (7) released for public interest; (8) revoked by law; (9) designated as a wasteland; (10) designated as destroyed land; (11) the end of the agreement on granting rights or agreement on land use for use rights over rights or management rights; and/or (12) the right holder no longer meets the requirements as the subject of the right.

2. Lease Rights for Buildings: Foreigners domiciled in Indonesia can become holders of lease rights. If another person's land can be used for construction purposes by paying the owner an amount of rent, that person has the right to rent the land. You can pay the rent as follows. a) Once

or at any time. b) Before or after the land is used. The land lease agreement must not be accompanied by conditions that include elements of extortion.

3. Ownership of the residential unit: A residential unit is a residential unit whose main purpose is individual use with the main function of living and has connection options to public roads. Apartments can be built on land with building rights or rights of use on state land or land with administrative rights. Moreover, ownership over Apartment units is an ownership right over Apartment units which is different from the joint rights to shared parts, ordinary objects, and communal land.

Apartment unit for foreigners sets in Article 143-145 Law Number 11 of 2020. According to Article 144(1) of the Employment Creation Act, the ownership of condominium units can be granted to Indonesian citizens, Indonesian legal entities, foreigners with permits required by laws and regulations, foreign entities legally represented in Indonesia, or Indonesia has representatives from foreign and international institutions that are represented. Pursuant to Article 144 Paragraph (1) of the Employment Creation Act, property rights can be granted to residential units The property of residential units by foreigners is in Article 67 Paragraph (1) letter c of Government Decree No. 18 of 2021 that foreigners who have a permit according to the statutory Have provisions that property rights can be granted to the residential units.

The regulation expressly extends the rights to own apartment units to foreigners who possess the required immigration documents and foreign legal entities with representative offices in Indonesia. Further, foreigners who hold the required immigration documents may own landed houses built on Right of Use land and apartment units built on Right of Use land or Right to Build land. Therefore, foreigners can hold Apartment Unit Freehold built on Right to Build land. [17] Immigration document is a visa, passport, or residence permit issued by the authority by the provisions of the legislation regarding immigration. This article is considered unclear and has the potential to cause a prolonged polemic in the community. However, the Agrarian Affairs Minister and Spatial Planning/National Land Agency has determined that foreigners may only own Apartment Units. This permit is granted to foreigners because Apartment Units or Flats are different from landed houses.

Therefore, three factors became obstacles: land rights status, price limits, and immigration or foreign citizens' residence permits. The government must synchronize it with the Basic Land Law regarding the status of apartment land, price limits must also be set, and immigration

issues. If everything is in sync, it will attract foreigners to buy condominiums in Indonesia. Of the three factors, foreign immigration is considered to be the biggest obstacle. Only foreigners who already have a Limited Stay Permit Card and a Permanent Stay Permit Card can buy apartment units. This is different from Singapore, where foreigners can buy condominiums even though they do not live and settle (domicile) in that country. The Job Creation Law should be a catalyst for foreign investment. If the government then makes derivative regulations from the Job Creation Law, it must stimulate foreign ownership by eliminating the obligation to have a Limited Stay Permit Card and a Permanent Stay Permit Card. This regulation must be made immediately as a follow-up to the Job Creation Act if the enthusiasm is to make it easier and stimulate the interest of foreigners to buy apartment units for condominiums in Indonesia. Property transactions require ease of residence permit processing. Furthermore, foreigners allowed to own residential property in Indonesia are foreign nationals whose presence benefits, do business or invest in Indonesia.

The ownership rights over Apartment units can be split or merged by attaching the amendment to the deed of separation of ownership rights to the Apartment unit, which has been approved or ratified by the authorized official. In addition, ownership of the apartment unit may be transferred to another party or inherited and pledged as collateral by encumbered with a mortgage. Mortgage loans provided by institutions have a vital role in actualizing potential housing demand. Competition spurs lenders to offer loan products that meet client preferences. [18] Securitizing residential mortgages have been used effectively to manage mortgage-related risks. [19]. Thus, it is necessary to simplify licensing, granting loans, and mortgage rights by foreigners.

Apartment units can be built on the land right of build or right to use on State land or land with management rights. Rights of build may be given simultaneously with the correct extension after obtaining a function-worthy certificate. At the same time, rights of use may be granted an extension and renewal of rights if they have obtained a function-worthy certificate.

Unfortunately, there are several provisions of the regulation regarding the new rights of foreigners to obtain Apartment units that seem to contradict other existing laws. In particular, it is difficult to see how the certificate of the apartment unit can be issued to foreigners in the case of the apartment located in a block that is built on the land with the right to build, in that case, the certificate of the apartment unit can only be issued to those who legally fulfill the requirements to hold the right of the build.

Since foreigners cannot own the Building Use Rights, it is logically impossible for the Land Office to issue a certificate for an apartment unit built on land with a Rights of Build. Because it is contrary to Law Number 5 of 1960 concerning the Basic Agrarian Law and Law Number 20 of 2011 concerning apartments, even article 34 Government Regulation Number 18 of 2021, according to the law, the Rights of Build can be granted to Indonesian citizens and Indonesian legal entities only. This means that the Job Creation Law changes the Basic Agrarian Law and the Apartment Law.

II. Residential Dwelling/Landed Houses

Foreigners who are allowed to own a home have an ID letter according to the provisions of the legislation. The work that can be stopped is as follows.

- a) Housing: Right to Use. or
- b) The house under the above usage rights.
 - (1) Contractual rights permit the use of property deed.
 - (2) Management rights are based on land use contracts with authorized managers.

Another requirement is that the apartment is built on a parcel of land with Rights of Use or Rights of Build on State Land, land with Management Rights, or land with Ownership Rights that is built-in special economic zones, free trade areas and free ports, industrial areas, and other economic zones. However, foreigners may only acquire apartments in special economic zones, free trade or port zones, industrial zones, or other economic zones. "Other economic zones" means urban or suburban zone, tourism zone, or a zone suitable for vertical housing development, and which have a positive impact on the community's economy.

Ownership of residential dwellings by foreigners is granted with the following limitations: a) minimum price; b) area of land parcels; c) the number of land parcels or Apartment units, and d) designation for residential or residential houses as previously regulations stipulate that property owned by foreigners is subject to minimum price restrictions, floor area, land area, several apartment units, and zoning (they must be in areas zoned for residential purposes). Currently, minimum-price restrictions are sets in Minister of Agrarian Affairs Regulation Number 29 of 2016. For example, the minimum price for an apartment unit permitted to be owned by foreigners in Jakarta Province is IDR 3 billion (approx. USD 200,000). Regulation of the Minister of Agrarian and Spatial Planning/Head of The National Land Agency Number 13 of 2016, which set the lowest price list for foreigners buying single-family homes or flat units, have been revoked.

If the foreigner passes away, the residential dwelling can be inherited by the heirs. If the heir is also a foreigner, he must have immigration documents according to the provisions of the legislation. The beneficiary is a foreigner who owns a house built within one year based on the land of use or building rights or based on an agreement with the owner of the land right that no longer resides in Indonesia. will do. In that case, the beneficiary must waive or transfer the rights to the house and transfer the land to another party that meets the requirements.

Indonesian citizens married to foreigners have the same territorial rights as Indonesian citizens if they are joint owners. The agreement d4 on the property between spouses (marriage). This regulation can also avoid "legal smuggling." Violations of the Law are often carried out by foreigners who want to buy assets in Indonesia through contract marriages, nominee agreements, the absolute power of attorney. [20] An application to extend the term of a Rights of Cultivate, Rights of Build, Rights of Use must be made before its expiry. In contrast, an application for renewal of any of these titles must be made within two years of expiry. The government will be granted an extension of the land rights term only after the land has been used or utilized.

Other provisions on the procedure of granting and restricting the ownership of a home or residence to foreigners, as referred to in Article 69 to Article 72, are stipulated in the Ministerial Regulation. No value yet.

4. CONCLUSION

Law Number 11 of 2021 concerning Job Creation introduces new provisions. The Ministry of Agrarian and Spatial Planning must maintain the concepts and principles of the National Land Law in order to avoid legal uncertainty. In the past, foreigners could only buy apartments if the land had use rights. Now, foreigners can also buy flats with building rights. However, the interests of Indonesian citizens must be prioritized.

Foreigners have not bought apartments in Indonesia if there is no legal certainty, political-economic stability, and a good investment climate, even though the regulations are well regulated. Issues related to the clarity of permits for foreigners to obtain housing and apartment units are still being questioned. This will lead to some complicated interpretations in practice. In addition, the rights of Indonesian citizens living in the metropolitan area will be threatened by foreigners to obtain flats or landed houses related to inheritance and long-term foreign ownership residences. Therefore, the Government of the Republic of Indonesia can use the Australian government's concept of a Foreign Investment

Review Board (FIRB) to assess the feasibility of a person's assets in a residential investment application. There are special requirements for foreign investors who want to own a residence or apartment unit in Indonesia, such as eligibility, minimum monthly income, minimum liquid assets, certain fixed deposits and so on.

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